EXHIBIT 8

ALLEN-BRADLEY COMPANY, INC., Plaintiff, v. AUTOTECH CORPORATION, MICROFAST CONTROLS CORP., and SHALABH KUMAR, Defendants

No. 86 C 8514

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

1989 U.S. Dist. LEXIS 6621

June 1, 1989, Decided

OPINIONBY:
[*1]

HOLDERMAN

OPINION:

MEMORANDUM OPINION AND ORDER

JAMES F. HOLDERMAN, UNITED STATES DISTRICT JUDGE

On September 2, 1988 this court denied defendants' motion for partial summary judgment on counts seven, eight and nine of the complaint. The court determined, inter alia, that a genuine issue of material fact existed as to whether Allen-Bradley had granted an implied license to purchasers of its 1771 rack.

Thereafter on April 19, 1989 this court granted Allen-Bradley's motion for summary judgment on Microfast's counterclaim for infringement of U.S. Patent No. *3,761,882* (the "*'882* patent").

Defendants have now moved for certification of the court's ruling of September 2, 1988 pursuant to *28 U.S.C. § 1292*(b). * Additionally, defendants have requested the court for entry of a final judgment pursuant to Fed. R. Civ. P. 54(b) against Microfast and in favor of Allen-Bradley on Microfast's counterclaim for infringement of the *'882* patent.

> * Actually, defendants would have the court certify the following question for appeal pursuant to *28 U.S.C. § 1292*(b):
>
> Can a defendant which is a supplier of an unpatented circuit board be held liable as a contributory infringer where:
>
> (a) he sells the circuit board to a customer who has purchased from the patent owner the patented circuit board assembly;
>
> (b) unpatented components of the circuit board assembly are capable of non-fringing use; and
>
> (c) such non-infringing use utilizes less than all of the patent claim elements.
>
> See Defendants' Mem. in Support, pp. 6-7. *28 U.S.C. § 1292*(b) nowhere confers upon this court the authority to seek such an advisory opinion. Rather, the statute authorizes the court to certify for immediate appeal an order which involves "a controlling question of law as to which there is substantial ground for difference of opinion," the immediate appeal from which may materially advance the ultimate termination of the litigation. [*2]

Defendants' motions will be granted. Since the court's ruling of September 2, 1988 involves a controlling question of law as to which there is substantial ground for differences of opinion, and since the court believes that resolution of the issue will materially advance the termination of this litigation, the court will certify for immediate appeal its conclusion that a genuine issue of material fact exists as to whether Allen-Bradley granted an implied license to purchasers of its 1771 rack. See Memorandum Opinion and Order, dated September 2, 1988, pp. 2-6.

Furthermore, the court concludes that no just reason exists to delay entry of final judgment with regard to Microfast's counterclaim for infringement of the *'882* patent, and that the additional prerequisites to a Rule 54(b) certification have been satisfied. *Stearns v. Consolidated Management, Inc., 747 F.2d 1105, 1108 (7th Cir. 1984).*

CONCLUSION

For the reasons stated herein, the court's ruling of September 2, 1988 with regard to the existence of a genuine issue of material fact precluding summary judgment on the seventh, eight and ninth counts of the amended complaint is certified for interlocutory appeal pursuant [*3] to *28 U.S.C. § 1292*(b).

Furthermore, final judgment is entered pursuant to Rule 54(b) Fed. R. Civ. P. in favor of Allen-Bradley Company, Inc. and against Microfast Controls Corp. on Microfast's counterclaim for infringement of U.S. Patent No. *3,761,882.*

DATED: June 1, 1989